(1)

88-1448
No.

Supreme Court, U.S.
FILED
FEB 23 1989
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1988

SHAHEED SALIM,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

A. PALMER IFILL
Attorney for Petitioner
Suite 400
1155 21st Street, N.W.
Fourth Floor
Lafayette Centre
Washington, D.C. 20036
(202) 223-8552

QUESTIONS PRESENTED

1. Whether the Petitioner in whose favor a jury returned a general verdict growing out of two separate and distinct arrests was denied the right to a jury trial when the trial court neglected to enter a final judgment on the jury's verdict?

2. Whether the Petitioner in whose favor a jury returned a general verdict growing out of two separate and distinct arrests was denied the right to an appeal when the trial judge neglected to enter a final judgment on the jury's verdict, and when on appeal the District of Columbia Court of Appeals was unable to review the judgment of the trial court for lack of finality and remanded the case to the trial court , and when after remand the trial court entered a second judgment which was not final and which Petitioner was denied the right to appeal?

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED ..... (i)

TABLE OF CONTENTS ..... (ii)

TABLE OF AUTHORITIES ..... (iv)

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL PROVISIONS AND STATUTES.....3-9

STATEMENT OF THE CASE 10

REASONS FOR GRANTING WRIT 18

CONCLUSION.....27

APPENDIX: PAGE

Appendix A- Order of Trial Court (December 30) (1986) 1a

Appendix B- Remand Order of D. C. Court of Appeals 10a

Appendix C- Order of trial court (June 30, 1988) 15a

Appendix D- Judgment of D. C. Court of Appeals 23a

Appendix E- Motion to Consolidate & For Summary Reversal 25a

Appendix F- Order D. C. Ct of Appeals. 32a

		PAGE
Appendix G-	Order of D. C. Ct. of Appeals denying Motion for Rehearing and hearing en banc.	34a
Appendix H-	Jury Verdict.	36a

TABLE OF AUTHORITIES

Cases Page

Baltimore & C. Line v. Redman,
295 U.S. 654 22

Dyhouse v. Baylor and Eastern Cab.,
455 A. 2d 901 (D.C. App) .. 19

Hudson v. Ashley, 411 A2d 963
D. C. App. 18

Jones v. American Express Co.
485 A. 2d 607 (D.C. App.) ...18

Malley v. Briggs,
475 U.S. 335
106 S. Ct. 1092
89 LEd 2d 271 10,11

Rinaldi v. Yaeger,
384 U.S. 305 (1966) 26

Slocum v. New York Life Ins. Co.
228 U.S. 364 (1913).....20,22

STATUTE AND REGULATIONS

Rule 4(a) D. C. Ct. App. 24

Rule 27, D. C. Ct. App. 24

Rule 28, D. C. Ct. App. 24

Rule 34, D. C. Ct. App. 24

Rule 54 (b) Superior Court Rules ...11,12

NO: _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

SHAHEED SALIM,

Petitioner,

vs.

THE DISTRICT OF COLUMBIA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner, Shaheed Salim, petitions the Court for a Writ of Certiorari to review the judgment of the District of Columbia Court of Appeals entered on October 12, 1988; rehearing denied, December 8, 1988.

OPINIONS BELOW

The opinions of the District of Columbia Court of Appeals were not published. The opinions of that Court are reproducd in the appendix. Appendix: B, D, F.G.

The opinions of the trial court were not published. They are reproduced in the Appendix: A, C.

JURISDICTION

The jurisdiction of this Court vests by reason of 28 U.S. C. 2101 (c).

CONSTITUTIONAL PROVISIONS AND STATUTES

AMENDMENT 5

No person shall be ... deprived of life, liberty, or property, without due process of law; ... .

AMENDMENT 7

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

RULE 4, D. C. Court of Appeals

11. Appeals as of Right-When Taken

(a) Civil Cases

(1) Notice of Appeal. A notice of appeal in a civil case shall be filed with the Clerk of the Superior Court within 30 days after entry of the judgment or order from which the appeal is taken unless a different time is specified by the provisions of the District of Columbia Code.

RULE 27, D. C. Court of Appeals

Rule 27. Motions.

(a) Content of Motions; response in opposition; reply.

Unless another form is prescribed elsewhere by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought.

RULE 28, D. C. Court of Appeals

Rule 28. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain a title page on which shall appear the number and title of the case in this Court, the names of counsel filing same ... the type of appeal or proceeding and under appropriate headings and in the order here indicated:

(1) Certificate of counsel; ...

(2) Table of contents , ...

(3) A statement of the issues ...

(4) A statement of the case. ...

(5) An argument. ....

(6) A short conclusion stating the precise relief sought.

RULE 34. D. C. Court of Appeals

Rule 34. Calendering cases for hearing.

(a) List of cases to be argued. The Clerk each month shall prepare and post in his office a list of cases to be heard the following month. ...

(b) Summary calendar. Whenever the Court , sua sponte or on suggestion or of a party, concludes that a case is of such character as not to justify extended oral argument, the case may be placed on the summary calendar. ... .

(c) Calendaring cases for dismissal. Where no brief for appellant has been filed and the time for filing said brief has expired, the Clerk may place such case on the regular calendar for dismissal.

(d) Postponement or continuance. ... .

RULE 54 (b) -Superior Court Rules

(b) Judgment upon multiple claims or involving multiple parties. When more than 1 claim for relief is presented in any action, whether as a claim, counter-claim, cross-claim, or 3rd-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to 1 or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is

subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

STATEMENT OF THE CASE

On September 19, 1986, a Superior Court of the District of Columbia jury returned a general verdict for Petitioner on his two counts of false arrest and false imprisonment against the District of Columbia, Respondent, growing out of his arrests on September 23, 1981, and on October 19, 1981, by police offices in the employment of the District of Columbia.

Following the return of the verdict the Respondent moved for a judgment notwithstanding the verdict, which was opposed. The basis of its motion was that under Malley v. Briggs, 475 U.S.335 , 106 S. Ct. 1092, 89 L.Ed 2d 271 (1986), Petitioner could not prevail due to the fact that he was arrested pursuant to arrests warrants issued by a Superior Court

of the District of Columbia judge in both instances, which warrants themselves established probable cause, and precluded a suit for false arrest and imprisonment as a matter of law.

The trial court in an opinion , Appendix A , ruled that the arrest of September 21, 1981, (the arrest for grand larceny) was based upon Malley v. Briggs, supra, supported by probable cause in view of the fact that Petitioner was arrested pursuant to a valid arrest warrant.

The trial court then purported to enter a final judgment on the verdict, setting aside the entire verdict, while not ruling on the second arrest, the arrest of October 10, 1981 (obstruction of justice).

Rule 54 (b) of the Superior Court of the District of Columbia rules is identical to its federal counterpart.

This rule provides that:

(b) Judgment upon multiple claims or involving multiple parties.

" When more than one claim for relief is presented in an action , whether a claim, counterclaim, cross-claim or 3rd-party claim, .. . the Court may direct the entry of a final judgment as to 1 or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or any form of decision, however designated, which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the claims or parties, and the order or other "

"form of decision is subject to revision at any time before the entry of judgment adjudicating all of the claims and the rights and liabilities of all the parties."

Rule 54 (b) , Superior Court Rules.

Petitioner took an appeal to the District of Columbia Court of Appeals from the judgment of the trial court entered on December 30, 1986, setting aside the jury' s verdict based upon its ruling that one of the arrests of the Petitioner was supported by probable cause.

The District of Colmbia Court of Appeals noted that since the jury's verdict was a general verdict ,(See, Appendix H , wherein the verdict is reproduced), the appeal was not final for the reason that the trial court only ruled on one of the arrests and not the other.

The District of Columbia Court of Appeal then remanded the case to the trial

court. The unpublished opinion of the District of Columbia Court of Appeals is reproduced in the Appendix, Appendix B .

Upon remand, the trial court then purported to issue another final judgment, ruling that the second arrest, the arrest of October 10, 1981, was supported by probable cause, and once more entered judgment for the Respondent. This second judgment was entered on June 30, 1988, and is reproduced as Appendix C .

Petitioner once more appealed to the District of Columbia Court of Appeals from the judgment entered on June 10,1988, by the trial court.

Before his brief on the merits of his appeal was due, the Petitioner filed a Motion to Consolidate its second appeal with its first appeal, and a motion for summary reversal of the judgment of the trial court.

The motion to consolidate and for summary reversal is reproduced as Appendix E.

District of Columbia Court of Appeals procedure allows for the filing of summary disposition motions before the brief of the appellant is due.

Appellant filed a procedural motion for summary reversal. In his motion he argued that the judgment of the trial court entered on December 30, 1986, and the judgment entered on June 30, 1988, both denied him the right to a jury trial since neither judgment was a final judgment.

Appellant also argued that he was denied the right to appeal to the D. C. Court of Appeals , a right guaranteed him by the Seventh Amendment to the United States Constitution. He also argued that he was denied due process of law.

Appellant's motion for summary reversal did not deal with the validity of the underlying judgment of June 30, 1988, which he would have dealt with in his appeal brief, were the motion for summary reversal denied.

The District of Columbia Court of Appeals in an Judgment Order, Appendix D, granted the motion to consolidate both appeals and upon consolidation, summarily affirmed both judgments of the trial court, the judgment of September 30, 1986, and the judgment of June 30, 1988.

Petitioner thereupon filed a motion for rehearing and hearing en banc, arguing that the action of the court in summarily affirming both judgments appealed from without giving the Petitioner the right to file its brief and to address the validity of the judgment of the court below entered on June 30, 1988, denied him the right to an appeal.

Appellant argued on his petition for rehearing and for hearing en banc that:

" Furthermore, the affect of the second final judgment was to deny appellant the right to appeal. For here this court affirmed the judgments appealed from without giving the appellant the opportunity to pursue his appeal and to raise valid issues, both raised here and both not raised ,respecting the validity of the second final judgment and the legal merits of the same. So as far as the second final judgment goes , appellant is foreclosed from filing a brief and arguing the merits of this order."

The District of Columbia Court of Appeals denied the motion for rehearing and for hearing en banc.

REASONS FOR GRANTING THE WRIT

The trial judge failed to enter a final judgment on the jury's verdict. This failure resulted in the denial of the right of the Petitioner to a jury trial.

Superior Court of the District of Columbia Rule 54 (b) has been consistently interpreted by the D. C. Court of Appeals as to require a final judgment for the basis of an appeal in the absence of an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. Hudson v. Ashley, 411 A. 2d 963 (1980) (D. C. App.) .

The District of Columbia Court of Appeals has consistently held that " strict compliance with Rule 54 (b) is an absolute necessity." Jones v. American Express Co. 485 A. 2d 607,609 (1983)(D. C.App.)

In the absence of a determination that there is no just reason for delay and upon an express direction for entry of a judgment, the D. C. Court of Appeals has consistently held that there is no jurisdiction to consider an appeal, and that the appeal must be dismissed for lack of a final judgment. Dyhouse v. Baylor and Eastern Cab, 455 A. 2d 901 (1983)(D. C. App.); Hudson, supra; Jones, supra.

Two issues of false arrest were presented to the jury, the arrest of Petitioner on September 23, 1981, and the arrest of Petitioner on October 10, 1981. The jury returned a general verdict for Petitioner and the trial court on a motion for judgment notwithstanding the verdict ruled the arrest of September 23, 1981, to be not supported by probable cause and the entire verdict was set aside by what was purported to be a final judgment.

On appeal of the purported final judgment, the Court of Appeals was unable to exercise appellate jurisdiction due to the lack of finality of the purported final judgment and it remanded the case to the trial court. The trial court thereupon issued another judgment, ruling that the arrest of October 10, 1981, was based upon probable cause and once more granted the motion of the respondent for judgment notwithstanding the verdict.

Thus, there were two judgments in the case, the judgment entered on December 30, 1986, Appendix A, and the judgment entered on June 30, 1988, Appendix C.

Neither judgment is a final judgment.

The jury's verdict in Petitioner's favor resolved all of the issues in his favor, Slocum v. New York Life Ins. Co., 228 U.S. 364,398 (1913). When the trial court purported to grant judgment notwithstanding the verdict for Respondent

by ruling one of the arrests to be valid, but not the other, it left intact the jury's verdict as to the invalidity of the second arrest, the arrest of October 10, 1981.

Thereafter, Petitioner appealed to the D. C. Court of Appeals, which instead of reversing the trial court, remanded the case to the trial court for findings with respect to the second arrest. The trial court thereupon entered a second judgment notwithstanding the verdict, although there was no second motion for the same. This second judgment was appealed to the D . C. Court of Appeals . Before Petitioner's brief was due he sought summary reversal of the second judgment on procedural grounds, the lack of finality of the judgment. Thereupon the Court of Appeals, without reason, summarily affirmed both judgments without giving the Petitioner the right to brief the

underlying merits of the second judgment.

The Seventh Amendment to the United States Constitution , in the absence of valid judgment notwitstanding the verdict ,entitles the prevailing party to a judgment on the jury's verdict. Slocum v. New York Life Ins. Co., 228 U.S. 364 (913); Baltimore & C. Line v. Redman, 295 U.S. 654 (1935).

In the instant case, the judgments notwithstanding the verdict entered for the Respondent were invalid. The first judgment notwithstanding the verdict left the jury's verdict intact with respect to the invalidity of the second arrest of Petitioner, the arrest of October 10, 1981. The first judgment notwithstanding the verdict was not a final judgment and the D. C. Court of Appeals was unable to exercise appellate jurisdiction. The second judgment notwithstanding the verdict was also not a

final judgment since it only adjudicated the arrest of October 10, 1981, and it did so one year and a half after the first motion for judgment notwithstanding the verdict was granted.

By its own rules and decisions, the D . C. Court of Appeals have firmly and consistently held that the both judgments issued in this case to be not final judgments. Under the circumstances, the Petitioner was denied his Seventh Amendment right to a jury trial.

(11)

Petitioner was also denied his right to appeal in violation of the Due Process Clause of the United States Constitution.

The District of Columbia Court of Appeals allows appeals as of right in civil cases from the Superior Court of the District of Columbia. Rule 4 (a) of the Rules of the D. C. Court of Appeals provides that a timely notice of appeal must be filed for an appeal as of right to be taken. After taking an appeal, a party may file motions as provided for by Rule 27 of the Rules of the D. C. Court of Appeals.

The requirement for filing of brief is spelled out by Rule 28 of the D.C. Court of Appeals. After the filing and service of briefs the case is calendared for a hearing, as provided for by Rule 34 of the Court Rules.

Petitioner filed a motion to consolidate the appeal from the first judgment and the appeal from the second judgment and for a motion for summary reversal of the second judgment of the trial court. Appendix E .

Petitioner's motion for summary reversal did not deal with the underlying merits of the second judgment, but only with the procedural aspects of the second judgment. Petitioner alleged that this second judgment was not a final judgment and that he was being denied the right to an appeal and to a jury trial.

The D. C. Court of Appeals granted the motion to consolidate, and upon consolidation, summarily affirmed both the first and the second judgments, without giving Petitioner the right to address the validity and merits of the second judgment.

The District of Columbia Court of Appeals had stated in its remand order that it was unable to address the merits of the first appeal. Petitioner was denied the right to brief and to address the merits of the second judgment.

In Rinaldi v. Yaeger, 384 U.S. 305 (1966), this court held that once a state has established avenues of appellate review, the avenues must be kept free of unreasoned distinctions that can only impede access to the courts.

In the instant case, review by the District of Columbia Court of Appeals included the right to address and to brief the underlying merits of the order appealed from. Petitioner was denied this right. Here he was denied the right to brief the merits of the second judgment.

Under the circumstances, he was denied

the right to appeal as guaranteed him by the Due Process Clause of the United States Constitution.

CONCLUSION

For the reasons expressed above, Petitioner requests that his Petition for a Writ of Certiorari be granted and that such a writ issue to the District of Columbia Court of Appeals to review the judgments entered in this case.

Respectfully submitted,

A. Palmer Ifill

A. Palmer Ifill, D.C. Bar# 192864
Suite 400
1155 21st Street, NW DC 20036
223-8552
Attorney for Petitioner

Dated: February, 1989.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

SHAHEED SALIM,	)	
vs. Plaintiff,	)	Civil Action No:
DISTRICT OF COLUMBIA	)	12374-82
Defendant.	)	December 30,1986

O R D E R

Upon consideration of defendants' motion for Judgment Notwithstanding the Verdict , or in the Alternative for a New Trial or in the Alternative for a Remittitur, plaintiff's opposition thereto, the entire record herein, and oral arguments by the parties, it is this __ day of _____, 1986,

ORDERED, that defendant's motion for Judgment Notwithstanding the Verdict is GRANTED and it is further,

ORDERED, that judgment shall be entered for the defendant and it is further

ORDERED, that if the foregoing judgment is hereafter vacated or reversed, then and on that condition , defendant's Motion for a New Trial is DENIED, and it is further

ORDERED, that defendant's Motion for a Remittitur is DENIED.

Rule 50 (b) of the D. C. Superior Court Civil Rules (motion for judgment notwithstanding the verdict) states, in part,

> "(W)henever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a leter determination of the legal questions raised by the motion. ... "

The court finds that as a matter of law , the defendant should prevail in the instant action. Under Malley v. Briggs, 106 S. Ct. 1092, the test for whether or not a police officer should be held liable for false arrest when the arrest was made

with a valid arrest warrant (as was the case here) , " is whether a reasonably well-trained officer ... would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant", see id at 1098.

Several facts establish that in the instant case Detective Carr had probable cause to fill out an affidavit and apply for an arrest warrant and that the affidavit established probable cause.

1. Upon responding to a radio call that there had been a weekend burglary at a business which was 25% owned by the plaintiff, Decective Carr spoke to the majority owner of the business and complaining witness James Hawk, Ms. Hackley who owned the business next door , and later another complaining witness Guy Hawkins. From these people Detective Carr learned that $18,000 worth of tools had been stolen (apparently by someone with a key to the premises), that

Mr. Hawkins's tires had been placed on the plaintiff's car without Hawkins' permission, and that Ms. Hackley saw the plaintiff and workers in the shop over the weekend when it is normally closed. Detective Carr also spoke to the plaintiff and an employee of the plaintiff both of whom stated they knew nothing about the tools and explained that the tire switch was a mistake.

From this as well as other information, Detective Carr felt that the plaintiff was a prime suspect in the thefts and therefore filled out an affidavit in support of an arrest warrant based upon the information obtained from the complaining witnesses and the disinterested witness. Detective Carr did not include the plaintiff's explanations or version of the weekend's events in his affidavit, nor was he required to do so, especially in light of the fact that the plaintiff had become a

prime suspect in the case and his statement s could therefore be considered self-serving. The judge who issued the arrest warrant believed Detective Carr's affidavit to be reliable and issued a warrant for the plaintiff's arrest.

2. A grand jury indicted the plaintiff following his arrest. Through several stages of the plaintiff's criminal proceedings (from Preliminary Hearing to Grand Jury) the criminal justice system found that there was probable cause to arrest and try the plaintiff for a criminal offense .

The term "probable cause",of course, does not mean such evidence as would support a conviction. Rather, that term imports circumstances which "warrant suspicion " Illinois v. Gates, 462 U.S. 213, 235 (1953).

3. The plaintiff was in fact found guilty of receiving stolen property (felony) after a full trial. This is

certainly indicative of a valid arrest. Although plaintiff's conviction was later overturned on appeal, the D. C. Court of Appeals specifically stated that it was overturning the conviction because of insufficient evidence to support a felony conviction but that there was sufficient evidence fo support a misdemeanor conviction. Salim v. United States , 480 A. 2d 710 (D. C. 1984). At the trial on remand the government was not ready to proceed ; and the case was dismissed. Plaintiff then brought the instant action. It should , of course, be noted that neither the dismissal of the criminal case nor the decision of the Court of Appeals had any direct bearing on whether or not plaintiff had been arrested on probable cause , those events having occurred long after the fact of the arrest.

One of defendant's chief arguments in its motion is that plaintiff and

Plaintiff's attorney misled the jury by saying the criminal conviction was overturned due to insufficient evidence, not insufficient evidence to support a felony conviction. The court finds this argument unpursuasive in light of the fact that the defendant " opened the door" for that type of statement from the plaintiff when plaintiff was asked on cross-examination if he knew why the case was overturned. The plaintiff responded, " to the best of my knowledge, insufficient evidence." Plaintiff's attorney merely repeated what plaintiff had said during closing arguments, did so briefly, and it was not a chief part of his argument. As plaintiff's attorney 's statement in closing argument (that the Appeals Court overturned plaintiff's criminal conviction due to insufficient evidence) was defendant's chief reason for requesting a new trial, the court finds,

as it is required by rule 50 (c) that should the Court of Appeals overrule this court's judgment as a matter of law, the jury's decision should be reinstated and no new trial should be granted.

The Court also finds that the jury's verdict of $95,000 was not excessive in view of the entire record herein as well as verdicts in cases of similar nature. Thus, defendant's request for remittitur, should be jury's verdict be reinstated , is denied.

/s/

Paul R. Webber 111
JUDGE

December ___, 1986

Copies mailed to:

Lelsie Nelson, Esquire
Assistant Corporation Counsel
District Building, Room 320
Washington, D. C. 20004

A. Palmer Ifill, Esquire

2033 M Street, N.W. , Suite 800

Washington, D. C. 20036

DISTRICT OF COLUMBIA COURT OF APPEALS

No:87-16 Filed May 24,

SHAHEED SALIM, 1988

v . Appellant,

DISTRICT OF COLUMBIA,

Appellee.

Appeal from the Superior Court
of the District of Columbia
Civil Division
(Hon. Paul R. Webber, 111 , Trial Judge)
(Submitted May 10, 1988)

Before PRYOR, Chief Judge, NEWMAN, Associate Judge, and REILLY, Senior Judge.

O R D E R

In an appeal from an order granting judgment to the defendant (the District of Columbia) notwithstanding a jury verdict awarding $95,000 to the plaintiff in an action for false arrest and malicious prosecution, we are unable to reach the

merits of the appeal because of the absence of any findings by the trial court on one of the issues presented by the post trial motion on which the order was based. Consequently, we remand the record to the trial court for additional findings.

Appellant's complaint alleged that on two occasions, September 23, 1981, and October 10, 1981, he had been arrested without probable cause . Both arrests were made pursuant to warrants signed by a Superior Court Judge, to whom Police Detective Carr had submitted affidavits in which he summarized information given him by certain complainants which he averred that he believed to be true. Appellant's therey of the case was that these affidavits contained misstatements which were either deliberate or products of negligent investigation.

The first arrest warrant charged

larceny, the second, obstruction of justice. The witnesses mentioned in these affidavits subsequently testified before the grand jury, which returned abill of indictment on three counts; larceny, receipt of stolen goods, and obstruction of justice. After a trial on these counts, the jury found the defendant guilty of receiving stolen goods.

In the civil action, the trial court, at the close of all the evidence, directed a verdict for the defendant on the malicious prosecution issue, but left to the jury the issue of lack of probable cause for the two arrests. Neither side asked the jury to consider each arrest in separate verdicts. Thus, the damage award was stated in a general verdict. The order setting aside this verdict and granting judgment n.o.v. was accompanied by a written memorandum in which the trial judge stated his reasons for deciding

that lack of probable cause had not been established. But in analyzing the evidence, the memorandum made factual findings and conclusions of law only about the circumstances preceding the application for the larceny warrant issued in September, and the ensuing proceedings in the criminal justice system. No factual findings or conclusions of law were made with respect to the warrant for obstruction of justice executed the following month, although the propriety of this arrest was also drawn into issue at the trial, submitted to the jury for consideration, and may have been a factor in its computation of damages. Nevertheless, the order entered set aside the entire jury verdict.

While there is no express requirement in the rules that an order for judgment n.o.v. should be accompanied by written findings, there is a seeming inconsistency in a memorandum stating the basis for disposition on one issue and omitting

corresponding findings on an equally relevant issue.

Accordingly, it is

ORDERED that this record is remanded to the trial court for findings and conclusions of law with respect to the second arrest. Should such findings result in any modification of the judgment, the party adversely affected thereby may appeal. If the judgment remains unchanged, after such findings, the appeal shall be reinstated and the record transferred back to this court.

PER CURIAM

Copies to:

Hon. Paul Webber, 111

Clerk, Superior Court

A. Palmer Ifill, Esquire

1155 21st Street, NW #400 (36)

Charles L. Reischel,Esq.

Deputy Corporation Counsel

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

SHAHEED SALIM	)	Filed June 30, 1988
Plaintiff		
vs.	)	Civil Action No:
DISTRICT OF COLUMBIA	)	12374-82
Defendant.	)	

O R D E R

On September 19, 1986, a jury awarded damages to plaintiff on his claim of false arrest . Plaintiff had been arrested on two separate occasions , once for larceny and once for obstruction of justice. As the award was stated in a general verdict, it is not possible to determine whether the jury believed that defendant was liable for the larceny arrest , the obstruction of jsutice arrest, or both.

On December 30, 1986, the court granted defendant's motion for judgment notwithstanding the verdict , on the grounds

that probable cause existed for defendant's arrest for larceny. However, this decision did not address the validity of defendant's arrest for obstruction of justice . On May 24, 1988, this case was remanded by the Court of Appeals for a determination of whether a judgment notwithstanding the verdict would be appropriate with respect to the arrest for obstruction of justice.

A judgment notwithstanding the verdict is only appropriate when no reasonable person , in viewing the evidence in a light most favorable to the prevailing party, could reach a verdict in favor of that party. Oxendine v. Merrel Dow Pharmaceuticals, Inc., 506 A. 2d 1100, 1103 (D.C.1986). In the instant case , the jury was instructed that plaintiff's false arrest claim would fail if the arresting officer for both offenses, Detective Carr, had reason to believe and honestly did believe that the plaintiff had committed

the offenses of larceny and obstruction of justice. This is the standard for false arrest in the District of Columbia. See Wade v. District of Columbia, 130 A.2d 857, 862 (D. C. 1973). The court must now determine whether a reasonable person, in viewing the evidence in a light most favorable to the prevailing party, could have concluded that Detective Carr failed to satisfy this standard.

At trial, the following undisputed facts were established: On September 23, 1981, plaintiff was arrested for the offense of grand larceny ; on October 15, 1981, Ms. Maxine Hackley testified before a grand jury that was considering whether to indict plaintiff; on October 16, 1981, between 6:00 a.m. and 6:30 a.m., two bricks were thrown through the front window of Mrs. Hackley's store; on October 19, 1981, Detective Carr swore out an affidavit , which led to the issuance of a warrant for plaintiff's

arrest for obstruction of justice; the warrant was executed the same day.

One disputed factual issue,which was resolved conclusively at trial, was whether Ms. Hackley told Dectective Carr, prior to plaintiff's arrest, that the day before her window was shattered plaintiff had warned her that if she testified against him again, something was going to happen to her. Ms. Hackley and Detective Carr testified that such a statement had been made to Detective Carr, while plaintiff testified to the contrary. However, on cross examination plaintiff acknowledged that he did not know each and every conversation Detective Carr had with Ms. Hackley prior to his arrest for obstruction of justice. The court concludes that under these circumstances, no reasonable person would have found that such a statement had not been made by Ms. Hackley to Detective Carr.

Obstruction of justice occurs when a person ' corruptly, by threats or force, endeavors to influence , intimidate, or impede any juror, witness, or officer in any court in the District in discharge of his duties. ... " 22 D. C. Code Sec. 703 (1981). In the instant case, Detective Carr knew that plaintiff had been arrested for grand larceny, and that Ms. Hackley had testified before a grand jury concerning these charges on October 15, 1981. He had been told by Ms. Hackley that plaintiff had threatened her that same day. He knew that in the early hours of October 16, 1981, someone had thrown two bricks through Ms. Hackley's window. The court finds that under this set of facts, no reasonable person could have concluded that, at the tiem of the plaintiff's arrest, Detective Carr did not honestly and reasonably believe that plaintiff had committed the offense of obstruction of justice.

Several disputed factual issues were not resolved conclusively at trial. One such issue was whether all of the information contained in Detective Carr's affidavit was correct. Although there is no reason to believe otherwise, the evidence introduced at trial did not prove , to the extend that it would have been unreasinable to conclude otherwise, that Ms. Hackley reported to Detective Carr that plaintiff had specifically stated that " you and Jim Hawk are going to get it", or that " Chuck doesn't watch your place 24 hours a day." However, the defendant's liability hings only on whether Ms. Hackley told Dectective Carr that some sort of threat had been communicated to her, not on whether the threat was communicated in a particular way. Another issue that was not resolved conclusively at trial was whether plaintiff told Detective Carr that one of

of his shop which was right next door to Ms. Hackley's shop , had also been broken that morning. However, even if such a statement had been made, and its accuracy confirmed, Detective Carr would have been justified in concluding that plaintiff had broken the window himself in order to conceal his crom from the police. Thus such a statement, even if true, would not have affected the honesty or the reasonableness of Detective Carr's belief that plaintiff had committed the offense of obstruction of justice.

Wherefore, it is this 30th day of June, 1988, hereby

ORDERED, that Defendant's Motion for Judgment Notwithstanding the Verdict be, and hereby is granted.

/s/
Paul R. Webber, III
Judge

June_____, 1988

Copies mailed to:

Richard B. Hoffman

Clerk, Court of Apeeals

A. Palmer Ifill, Esq.

1155 21st Street, N.W. , #400

Washington, D. C. 20036

Charles L. Reischel, Esq.

Deputy Corporation Counsel

District Building, Room 320

1350 Pennsylvania Avenue, N.W.

Washington, D. C. 20004

DISTRICT OF COLUMBIA

Court of Appeals

NOs: 87-16 & 88-869

SHAHEED SALIM,

Appellant,

v. CA:12374-82

DISTRICT OF COLUMBIA,

Appellee.

BEFORE: Pryor, Chief Judge; Newman, Associate Judge, and Reilly ,Senior Judge.

JUDGMENT

On consideration of the motion of appellant to consolidate and motion for summary reversal after consolidation and the response there to, it is

ORDERED that the motion to consolidate is granted and these appeals are consolidated for all purposes . It is

FURTHER ORDERED that the motion for summary reversal is denied . It is

FURTHER ORDERED and ADJUDGED that the judgments on appeal are hereby summarily affirmed.

FOR THE COURT

RICHARD B. HOFFMAN
Clerk of the Court

Copies to:
Honorable Paul R. Webber, II
Cler, Superior Court
A. Palmer Ifill, Esquire
1155 21st Street, N.W.
Washington , D. C. 20036

Charles L. Reischel, Esquire
Deputy Corporation Counsel

DISTRICT OF COLUMBIA COURT OF APPEALS

Civil Action No: 12374-82

SHAHEED SALIM,

Appellant,

vs. Appeal No:87-16

DISTRICT OF COLUMBIA, 88-869

Appellee.

MOTION TO CONSOLIDATE AND MOTION FOR SUMMARY REVERSAL AFTER CONSOLIDATION

For the reasons set forth below, appellant, by and through his attorney, moves the Court for entry of an order consolidating the appeal in case 87-16 with the appeal in case 88-860, and for entry of an order summarily reversing the Judgment of the court in both 87-16 and 88-869. The reasons for this motion are:

1. CONSOLIDATION

This court entered an order in Case 87-16 remanding to the trial court the entire case for the purpose of considering the entry of a lesser verdict. The order on remand provided for the appeal by either party if dissatisfied with the lower court ruling on remand. The plaintiff took an appeal from the ruling of the trial court on remand. This appeal is numbered 88-869.

Plaintiff who was also the appellant in Case 87-16 seeks consolidation of these cases because of common and identical issues.

11. SUMMARY REVERSAL:

Appellant seeks summary reversal of the Judgments of the trial court entered on December 30, 1986 and June 30,1988.

The reasons are:

1. On December 30, 1986, the court purported to enter a final judgment in this case. Plaintiff took an appeal from the final judgment. The appeal was numbered 87-16.

2. On June 30, 1988, the court entered another judgment in this case . Plaintiff took an appeal from this judgment and the appeal was numbered 88-869.

3. As a result of the order entered in this case on remand on June 30, 1988, the trial court issued an order which makes the order of December 30, 1986 , not a final order and which makes

the order of June 30, 1988, not a final order.

4. There are thus no final orders in this case, and plaintiff has been denied his right to appeal , his right to a jury trial in contravention of the Seventh Amendment to the United States Constitution, and in contravention of the Due Process Clause of the Constitution.

5. Rule 54 (b) of the Superior Court Rules prohibits split judgments. The judgment entered in this case by the court below on June 30, 1988, created a split judgment, and denied finality , retroactively , to the judgment of December 30, 1986.

6. The trial court was without authority to enter a judgment retroactively , denying finality to the judgment of December 30, 1986, and was

without authority to enter a judgment on June 30, 1988, that is not a final judgment. Cohen v. Owens &Co. , 464 A. 2d 904 (D.C. App) (1983).

7. The remand purpose was for the purpose of entering a lesser verdict if the court were to find that the evidence called for a lesser verdict. It was not for the purpose of allowing the trial court to enter a judgment which denied finality retroactively to the judgment of December 30, 1986. Nor, was it for the purpose of permitting the court to enter a split judgment and one that it not final.

8. The appellant has been denied his right to a jury trial and his right to appeal in violation of the Seventh Amendment to the United States Constitution and in violation of the Due Process Clause of the said Constitution. Leichtman v. Koons, 527 A.2d 745 (D.C. App.) (1987); Rinaldi v. Yaeger, 384 U.S. 305, 88 S.Ct. 1818.

9. If the order of June 30, 1988, is allowed to stand, this order will not be a final order, and the order of Decembr 30, 1986, would not be a final order.There will be then no final order in this case.

10. Appellant is entitled to immediate summary reversal of the order of the court of June 30, 1988, and he is entitled to summary reversal of the order of the court of December 30, 1986. Appellant had been denied the right fo a jury trial, and he has been denied due process of law.

11. Appellant is entitled to have a judgment entered on the jury verdict based on this court's remand order in this case.

Respectfully submitted,

/s/

A. Palmer Ifill, No.192864
Suite 400
1155 21st Street, N.W.
Washington, D. C. 20036
223-8552

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, postage prepaid, this 21st day of September, 1988, to:

Charles L. Reischel, Esquire
Deputy Corporation Counsel
Room 320
District Building
1350 Pennsylvania Avenue
North West, Washington, D.C.
20004

/s/
A. Palmer Ifill, Esquire

DISTRICT OF COLUMBIA

Court of Appeals

NOS: 87-16 and 88-869

Filed October 31, 1988

SHAHEED SALIM,

Appellant,

v.

CA:12374-82

DISTRICT OF COLUMBIA

Appellee.

O R D E R

It appearing that appellant has filed a petition for rehearing and rehearing en banc, it is

ORDERED that appellee, within 20 days from the date of this order, shall file a response (ten copies) thereto.

BY THE COURT:

WILLIAM C. PRYOR

Chief Judge

Copies to:

A. Palmer Ifill, Esquire

Suite 400

1155 21st Street, N.W.

Washington, D. C. 20036

Charlses L. Reischel, Esquire

Deputy Corporation Counsel

DISTRICT OF COLUMBIA

Court of Appeals

NOS: 87-16 and 88-869

Filed December 8, 1988

SHAHEED SALIM,

v. Appellant,

DISTRICT OF COLUMBIA

Appellee.

BEFORE: Rogers, Chief Judge; Mack, *Newman, Ferren, Belson, Terry , Steadman, and Schwelb, Associate Judges;*Reilly and *Pryor, Senior Judges

O R D E R

On consideration of appellant's petition for rehearing and rehearing en banc, the opposition and reply thereto , it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

Copies to:

Honorable Paul R. Webber,111
Clerk, Superior Court
A. Palmer Ifill, Esquire
1155 21st Street, N.W.
Washington, D. C. 20036
Charles L. Reischel, Esquire
Deputy Corporation Counsel

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SHAHEED SALIM, :

vs. Plaintiff, :

DISTRICT OF COLUMBIA Civil Action No:

Defendant. 12374-82

VERDICT FORM

As to the claim of False Arrest and Imprisonment, we the jury find:

____x____ for the plaintiff.

_____ for the defendant

If you find for the defendant, proceed no further.

If you find for the plaintiff, state the amount you award.

$95,000

1227

FOREPERSON

September 19. 1986

Date